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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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9 MAURICE DAVIS,

No. CIV S-04-0707-FCD-CMK-P

10 Plaintiff,

11 vs.

FINDINGS AND RECOMMENDATIONS

12 STATE OF CALIFORNIA,

13 Defendant.
14 _____/

15 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
16 to 42 U.S.C. § 1983. Pending before the court is defendant's motion to dismiss (Doc. 19).

17 While plaintiff filed an opposition to the motion on July 26, 2005 (Doc. 21), the opposition was
18 not served on defendant's counsel. On August 4, 2005, the court directed plaintiff to re-serve his
19 opposition and file proof of such re-service in this court within 15 days. On August 15, 2005,
20 plaintiff responded to the court's August 4, 2005, order and asserted that the July 26, 2005,
21 opposition had in fact been served on defendant's counsel. Plaintiff supplemented his response
22 on August 30, 2005. As with the July 26, 2005, document, however, the August 15, 2005, and
23 August 30, 2005, documents appear not to have been served. Because the court could not
24 conclusively determine whether the July 26, 2005, opposition had been served, and in the
25 interest of justice, on September 22, 2005, the court again directed plaintiff to re-serve the July
26 26, 2005, opposition and to file proof of such re-service within 15 days. To date, plaintiff has

1 not complied. The July 26, 2005, opposition will, therefore, be stricken from the record and will
2 not be considered.

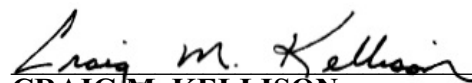
3 In its motion to dismiss, defendant argues that it is entitled to dismissal as an
4 immune defendant. The Eleventh Amendment prohibits federal courts from hearing suits
5 brought against a state both by its own citizens, as well as by citizens of other states. See Brooks
6 v. Sulphar Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition
7 extends to suits against states themselves, and to suits against state agencies. See Lucas v. Dep't
8 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th
9 Cir. 1989).

10 Plaintiff's complaint names only the State of California as a defendant. Pursuant
11 to its Eleventh Amendment immunity, no claim can be asserted against this defendant under
12 § 1983.

13 Based on the foregoing, the undersigned recommends that defendant's motion be
14 granted and that this action be dismissed.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. The document should be captioned "Objections to Magistrate Judge's
19 Findings and Recommendations." Failure to file objections within the specified time may waive
20 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 DATED: November 2, 2005.

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24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE